IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 10653 of 2004

Between:

The Mahalakshmi Devi Education Society, rep by Secretary, Mr. A. Sridhar Lakshman Devarakonda, Nalgonda District

..... PETITIONER

AND

1 The Government of Andhra Pradesh rep by Principal Secretary to Government, School Education Department, Secretariat Building, Hyderabad
2 The Commissioner and Director of School Education, Saifabad, Hyderabad
3 The National Council of Teacher Education, rep by Regional Director, Southern Regional Committee, 1st Floor, CSD Building, Jalahalli, Bangalore-560 031

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of mandamus declaring that No. Objection Certificate" Should be deemed to be issued to
the petitioner Society for establishing a B.Ed. College as per
the notification in Rc.No.2490/N2-2/2003, dt.1-12-2003
Devarakonda, Nalgonda District and permit the petitioner-Society to establish a B.Ed. College at Devarakonda, Nalgonda District.

Counsel for the Petitioner: MR.A.VEERAIAH SWAMY (T.ANANTHA BABU)

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following:

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.10653 OF 2004

ORDER:

In response to the Notification dated 01-12-2003 got published by the first respondent through the second respondent, inviting applications from Private Educational Societies, which are duly registered under the Societies Registration Act, for opening of new colleges of Education in the State, in 7 areas mentioned therein, petitioner which is a society registered under the Societies Registration Act, had, on 16-12-2003, the extended last date, submitted its application for establishing an educational college at Devarakonda, Nalgonda District. Since respondents 1 and 2 did not issue 'No Objection Certificate (NOC) for establishing educational college even after expiry of six months from the date of submission of its application, petitioner filed this petition seeking a direction to the third respondent to consider its application assuming that respondents 1 and 2 issued NOC in its favour.

(2) The case of the petitioner is that it had, after submitting the application, purchased the land for construction of the buildings and sought for and obtained approval for construction of school building, and made deposits of the money as required and since it did not receive NOC, it addressed letters to the second respondent to evaluate its application and issue NOC and since no action is being taken by respondent 1 and 2 even when the period prescribed by the apex Court in **ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NCTE ,** for issuance of NOC is expiring, it filed this petition, because the amended Sub-para (ii) of para-6 of the Regulations framed by the National Council of Teacher Education

(3rd respondent) reads:

> "Every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and/or increase in take, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT."

(3) The case of respondents 1 and 2 is that since they felt that the need for establishing more B.Ed., colleges has to be reviewed in a comprehensive manner, they cancelled the notification dated
01-12-2003 under which the petitioner made the application, and returned the amounts to all the applicants, petitioner is not entitled to any relief.

(4) The main contention of Sri T.Anantha Babu, learned senior counsel for the petitioner, is that the petitioner, which is running a B.Ed., college at Rajahmundry since 27 years, braving the risk of establishing B.Ed., college at Devarakonda in Nalgonda District, which is a backward tribal area with naxalite problems, in pursuance of the notification issued by respondents 1 and 2, purchased Acs. 5.00 of land and applied to the Gram Panchayat seeking permission for construction of a School building, and had made the deposits as contemplated, but after the new Government came to power, it cancelled the notification issued by the earlier Government, on the assumption that there is no need for establishment of more educational colleges, and that it is a lame excuse would be evident from the fact that G.O.Ms.No.47, dated 28-02-2005 issued by it shows that it wants to set up two English Medium B.Ed., Colleges in every district, which, prima facie would disclose that there, in fact, is a need for establishment of more B.Ed., colleges in the State. It is his contention that when first respondent issues a notification and creates an impression that it will act on that notification and makes the applicants spend money creating legitimate expectation that their applications would be considered it is not

free to cancel the notification and contends that since respondents 1 and 2 did not react on the application submitted by the petitioner within six months from 16-12-2003, in view of the amended in Sub-para (ii) of para-6 of the NCTE Regulations, and in view of the observations of the Supreme Court in ST. JOHNS TEACHERS TRAINING INSTITUTE case (1 supra), NOC should be deemed to have been issued to the petitioner and so third respondent may be directed to process the application of the petitioner, assuming that it has an NOC, more so because second respondent, in his counter affidavit, clearly admitted that petitioner complied with all the formalities.

(5) The main contention of the learned Government pleader is that since several applications were received for establishment of educational colleges, keeping in view the number of unemployed teachers, Government with a view to review the need to establish new educational colleges, cancelled the notification issued earlier, and since the same is a policy decision of the Government, it cannot be called in question. He relied on **A.S. SANGWAN v. UNION OF INDIA** , **NARENDRA PRASADJI v. STATE OF GUJARAT , ASIF HAMEED v. STATE OF J. & K., MAHARASHTRA S.B.O.S. & H.S. EDUCATION v. PARITOSH , STATE OF PUNJAB v. KHEMI RAM** and **BALCO EMPLOYEES' UNION (REGD.) v. UNION OF INDIA** . It is his contention that petitioner taking steps to comply with the formalities, which are essential and are the SINE QUA NON for considering an application, cannot be a ground for invoking the doctrine of either promissory estoppel or legitimate expectation and since Government after taking a decision issued G.O.Ms.No.49, Education, dated 04-03-2005, notifying that no permission would be issued for opening fresh Telugu Medium B.Ed., colleges and D.Ed., Colleges, as the existing intake in Telugu Medium B.Ed., colleges will cater to the needs of Teachers in Primary and High Schools, petitioner is not entitled to any relief. It is his contention that though the medium of instruction in B.Ed., colleges is English, since students are permitted to write the B.Ed., examination either in Telugu or Urdu or Hindi, most of the students

are opting to write the examination in Telugu only, the Government wants to put an end to such practice. Relying on **GOVT. OF A.P. v. J.B. EDUCATIONAL SOCIETY** , he contended that obtaining NOC from the Government is not an empty formality but is a mandatory.

(6) It is no doubt true that a policy decision taken by an elected Government, in its sovereign authority, cannot be called in question. In para-92 of **BALCO EMPLOYEES' UNION** case (8 supra) relied on by the learned Government pleader, the apex Court, at page-381 held:

> "In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the Court."

So, it is clear that policy decision also can be called in question, if it is contrary to law or is mala fide.

(7) In this case, since the notification was issued on
01-12-2003, calling applications for establishment of educational colleges in seven areas, it is easy to see that the Government issued that notification only after making a survey of the need for establishment of colleges in those areas, and after taking all the relevant facts into consideration. The events that took place subsequent to the issuance of that notification are not very relevant for deciding this petition. Respondents 1 and 2 are relying only on the events that took place subsequent to the notification, pursuant to which petitioner and several others submitted their applications. When a Government calls for applications, prescribing some conditions and keep them pending for several months all the applicants will have a legitimate expectation that their application would be considered on its merit. So, the Government cannot spring a surprise on the applicants, several months after

issuance of the notification, that it is cancelling the notification and hence is not considering them on their respective merit. Merely because Government has a right to take a policy decision, it cannot arbitrarily take some decision, negativing the legitimate expectation of the applicants and dub it as a policy decision.

(8) G.O.Ms.No.47, dated 28-02-2003 relied on by the learned Government pleader, shows that Government in fact decided to set up two English medium educational colleges in every district. There is a sly admission by respondents 1 and 2 that all the existing educational colleges in the State are English medium colleges but the students are given an option to answer the examination in the medium of their choice. So obviously it is that liberty, i.e., to answer the examination in a language of the choice of the students the Government seems to be taking away from the students by issuing that G.O. So, it is clear that the need to establish two B.Ed., college per district is still there. So, it is prima facie clear that cancellation of the notification dated 01-12-2003 is motivated and is not bona fide. 1st respondent seems to have taken a decision to cancel the notification only because it was issued by the previous Government, but not on factual basis and so its contention that it took into consideration the statistics before issuing the cancellation memo is but an attempt to pull wool on the eyes of public.

(9) Learned senior counsel for the petitioner placed reliance on **SA-YA-GOSH EDUCATIONAL TRUST v. THE NATIONAL COUNSEL FOR TEACHER EDUCATION** (W.P.No.52659 of 2003 dated

22-01-2004) rendered by the High Court of Karnataka at Bangalore and **NATIONAL COUNCIL FOR TEACHER EDUCATION v. JESI ADAM TEACHER TRAINING INSTITUTE AND OTHERS** (W.A.No.983 of 2004 and batch, dated 15-03-2004) rendered by the High Court of Karnataka, Bangalore, where it was held that refusal or grant of NOC by the State is not conclusive or binding, as the NCTE (third

respondent) has to consider each case independently, for grant of recognition, and contends that recently newspapers have reported that the decision of the Karnataka High Court in JESI ADAM TEACHER TRAINING INSTITUTE case was upheld by the apex Court, and contends that since NOC was not rejected to the petitioner within six months, as contemplated by the observations of

supreme Court in ST. JOHNS TEACHERS TRAINING INSTITUTE case (1 supra) and the Regulation No.6 of the Regulations framed by the third respondent, petitioner is entitled to a direction to the third respondent to process its application. The contention of the learned Government pleader is that since first respondent directed the second respondent to cancel the notification dated 01-12-2003 on 12-06-2004, i.e., within six months of the date of the date of submission of the application of the petitioner, it is clear that Government decided not to issue NOC to the petitioner, well within six months time and so petitioner is not entitled to any relief. It is his contention that since para 6 (iii) of the Regulations framed by the third respondent contemplates the 'endeavouring' of the concerned Governments issuing the NOC within six months of the date of receipt of application, which is similar to the use of such phrase 'shall endeavour' in Articles 43, 44, 45, 46, 48 and 51 contained in para IV of the Constitution of India, it means that it is only directory and not mandatory that an applicant should have response from the Government within six months of the date of application.

(11) As rightly contended by the learned senior counsel for petitioner, the learned Government pleader making a reference to Articles in part IV of the Constitution of India, for interpretation of the phrase 'shall endeavour' used in para 6 (iii) of the Regulations of the third respondent, has no relevance, because Article 37 of the Constitution clearly lays down that the provisions contained in that part IV of the Constitution shall not be enforceable by any Court and that it shall be the duly of the State to apply those principles in making laws. So, while making laws by the State,

those principles can be taken as mandatory.

(12) In para 17 at page 335 of its judgment, the apex Court in **ST. JOHNS TEACHERS TRAINING INSTITUTE** (1 supra) referred to the considerations for issuance of NOC by the State and observed:

> "It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in Sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or unchannelled power. The State government or the Union Territory has to necessarily confine itself to the guidelines issued by the council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law."

In para 19 at page 336, the apex Court referring to para 6 (ii) of the Regulations framed by the third respondent, the apex Court held:

> "This provision shows that even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of an NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5 (e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under sub-section (3) of Section 14 of the Act. Therefore no

exception can be taken to such a course of action."

(13) Petitioner wants to establish an educational institution in a Tribal area. As stated earlier, the present Government also feels that there is a need for two educational colleges in each district. Since grant or refusal of NOC by the concerned Government, per se, is not binding on the third respondent and since third respondent has to take an independent decision, keeping in mind the views expressed by the concerned State Governments, and since the counter affidavit filed by second respondent on behalf of respondents 1 and 2 shows that petitioner complied with all the formalities, and since I held that the cancellation of the notification dated 01-12-2003 is not bona fide, it is for the third respondent to take a decision whether or not to accord permission to the petitioner to start a new college of Education, and in view of the provisions of the National Council for Teacher Education Act, 1993 and the interpretation of the provisions of that Act by the apex Court in ST. JOHNS TEACHERS TRAINING INSTITUTE (1 supra).

I find no force in the contention of the learned Government pleader that in view of Section 20 of A.P. Education Act, 1982 petitioner cannot establish an educational college without permission of the first respondent. The contention that since first respondent sent a memo to second respondent on 12-06-2004 to cancel the notification dated 01-12-2003, respondents 1 and 2 should be deemed to have rejected NOC to petitioner on 12-06-2004 within six months of the application cannot be accepted for two reasons viz., (i) cancelling notification does not amount to refusal of NOC and (ii) communication between respondents 1 and 2 inter se does not amount to communication to petitioner. Intimation of cancellation of the notification was sent to petitioner by second respondent who issued the notification dated 01-12-2003, only on or after 22-06-2004 which is more than six months from the date of submission of application and so the deeming provisions will have its sway.

(14) In view thereof memo No.1675/Trg-I/2004, dated

12-06-2004 of the first respondent and the consequent proceedings in Rc.No.2490/N2-2/2004-8 dated 22-06-2004 of the second respondent canceling the notification dated 01-12-2003 are set aside and third respondent is directed to consider the application of the petitioner for recognition, according to law, and pass appropriate orders thereon keeping in view of the directions of the apex Court in **ST. JOHNS TEACHERS TRAINING INSTITUTE**

case (1 supra). Rule Nisi thus is made absolute. No order as to costs.

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(C.Y.SOMAYAJULU, J)

Dated: 20-04-2005

YCR

To

1 The Principal Secretary to Government, Government of Andhra Pradesh, School Education Department, Secretariat Building, Hyderabad
2 The Commissioner and Director of School Education, Saifabad, Hyderabad
3 The Regional Director, the National Council of Teacher Education, Southern Regional Committee, 1st Floor, CSD Building, Jalahalli, Bangalore-560 031

4. 2 CCs to G.P. for School Education, High court Buildings, Hyderabad (OUT)

5. 2 C.D. copies.